



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

February 28, 2006  
**CERTIFIED MAIL**

Burlington Northern Santa Fe Railway Company  
Mr. Bruce Polnicky  
2454 Occidental Avenue South, Suite 1-A  
Seattle, Washington 98134-1451

RE: Order # 2006CR-3126 Water Quality Certification for Burlington Northern Santa Fe  
Railway Company; Lyle Siding project US Army Corps No. 1998 00519

Dear Mr. Polnicky:

The request for certification for proposed work in wetlands and adjacent to the Columbia River has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Catherine Reed at (509) 575-2616. Written comments can be sent to her at the Department of Ecology, Central Regional Office or at [craj461@ecy.wa.gov](mailto:craj461@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeff Lewis, Section Manager  
Shorelands and Environmental Assistance Program  
CR:JT060220

Enclosure (permit)

cc: Corps of Engineers – Jim Green  
WDFW – Bill Weiler  
Klickitat County Planning Department – Curt Dreyer  
Ecology SEA HQ – Penny Keys



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<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER # 2006CR-3126</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. 199800519</b>
<b>CERTIFICATION TO</b>	)	To place approximately 15, 600 cubic yards of
<b>Burlington Northern Santa Fe Railway</b>	)	fill along 2,900 feet of the Columbia River
<b>Company</b>	)	shoreline in order to construct a railway siding
in accordance with 33 U.S.C. 1341	)	located east of Lyle in Klickitat County,
(FWPCA § 401), RCW 90.48.120, RCW	)	Washington.
90.48.260 and Chapter 173-201A WAC	)	
	)	

TO: Burlington Northern Santa Fe Railway Company  
 2454 Occidental Avenue South, Suite 1-A  
 Seattle, Washington 98134-1451

On August 16, 2005, Burlington Northern Santa Fe Railway Company (BNSF) submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification for the **Lyle Siding Improvement Project at BNSF Milepost 86.14 to MP 87.92, Line Segment 47, Fallbridge Subdivision, Northwest Division**. A public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on September 13, 2005.

The proposed project entails placement of 15,600 cubic yards of structural fill (rip rap stabilizing material) into the Columbia River along 2,900 linear feet of shoreline (1.57 acres). Portions of the new fill prism and existing fill prism will be planted to mitigate for the loss of the existing shoreline resources and to improve the vegetated condition over what currently exists in the existing railway fill prism. The work will occur in the Columbia River near Lyle, Washington, in sections 1, 2 and 12 of Township 2 North, Range 12 East and Section 7 of Township 2 North, Range 13 East. This location is within WRIA No. 30 in the Klickitat Watershed.

#### **AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §1311, 1312, 1313, 1316, and 1317 (FWPCA § 301, 303, 306 and 307);

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2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

#### **WATER QUALITY CERTIFICATION CONDITIONS:**

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

#### **A. General Conditions:**

1. For purposes of this Order, the term "Applicant" shall mean Burlington Northern Santa Fe Railway Company, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Central Regional Office, Attn: Federal Permit Coordinator, 15 West Yakima Avenue, Suite 200, Yakima, WA 98902. Any submittals shall reference Order No. 2006CR-3126 and Corps No. 199800519.
3. Work authorized by this Order is limited to the work described in the JARPA application, executive summary and JARPA errata sheet as received by Ecology on August 16, 2005. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.

4. Within 30 days of receipt of an updated JARPA Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
5. This Order shall be rescinded if the US Army Corps of Engineers does not issue an Individual 404 permit
6. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
7. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
8. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
9. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
10. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide to Ecology a signed statement from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. ***These statements shall be provided to Ecology before construction begins.***
11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation for each day of continuing noncompliance.

## **B. Water Quality**

### **No Impairment of Water Quality**

Certification of this project does not authorize the applicant to exceed the turbidity standard for Columbia River waters beyond the 300 foot mixing zone as allowed in WAC 173-201A-100(7) and -110(3). The mixing zone is established to allow only temporary exceedance(s) of the turbidity criteria during and immediately after project construction. Turbidity shall not exceed 5 NTU over background turbidity when turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. Furthermore, nothing in this certification shall absolve the applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

Procedures to protect Water Quality shall be followed as described in the following documents except as modified by this order:

- Biological Assessment (HDR June 1999) as summarized by Intermountain Resources on 20 July 2005 and amended by Intermountain Resources on 27 September, 2005.
- Water Quality Certification Clarification and Supplemental Documents for the BNSF Railway Co.'s Lyle Siding Project, Lyle WA Interstate Transportation Priority Project (23 December 2005)
- SEPA MDNS for the Lyle Siding Improvement Project by the Washington State Department of Ecology (1/26/2006)
- Environmental Permit Application JARPA Re-Submittal Documents for the BNSF Railway Co.'s Lyle Siding Project, Lyle WA (IMR 20 July 2005)

### **Water Quality Monitoring**

The applicant shall provide monitoring for turbidity during in-water River construction. The monitoring shall take place at a minimum during the first hour after the start of in-water work and at least once each day approximately one hour before the completion of in-water work. Monitoring shall take place at least twice daily at two locations: upstream of the in-water work to obtain a background reference measurement; and at one location at the downstream edge (point of compliance, which is 300 feet downstream) of the dilution zone. If impairment is observed beyond 300 feet downstream of the project, work shall stop immediately and Best Management Practices shall be implemented to remedy the situation. The actions taken to improve Best Management Practices and/ or

remedy the situation shall be recorded in the log. The log shall be kept on site and shall be made available to Ecology inspectors as requested. A copy of the monitoring reports shall be sent to Ecology at the end of each month (see address in A.2 above).

### **C. Stormwater**

Impacts from Stormwater shall be mitigated by procedures listed in the Storm Water Quality Management Plan (IMR: 20 July 2005) and by compliance with Ecology's General Construction Stormwater Permit for the project.

Mitigation elements are more fully described in the above-referenced documents and as revised through the conditions of this Order. Mitigation elements specified in the above referenced documents include (but are not limited to) the following:

1. All fills that are near sensitive areas will be stabilized with track packing, seed and mulch, or slope staking, planting, seeding and mulch. All areas with a soil toe with any potential for erosion and sediment transport will be protected with a sediment fence or sediment filter rolls.
2. Kick board / plates and sediment roll barriers shall be placed at the outer edge of the construction bench below the areas where concrete retaining walls are constructed or placed.
3. Work perimeter sediment barriers to protect the Columbia River shall be installed
4. There shall be daily inspection of erosion and sediment control BMPs

### **D. Wetlands/Vegetation**

Information contained within the following documents shall be used to mitigate for impacts to wetlands and vegetation on site:

- Biological Assessment (HDR June 1999) as summarized by Intermountain Resources on 20 July 2005 and amended by Intermountain Resources on 27 September, 2005.
- Water Quality Certification Clarification and Supplemental Documents for the BNSF Railway Co.'s Lyle Siding Project, Lyle WA Interstate Transportation Priority Project (23 December 2005)

- Mitigation measures as described the Project Mitigation / Riparian Restoration Specifications and Planting Plan (16 August 2005, by InterMountain Resources).

In addition, the following additional conditions shall be implemented in order to mitigate for wetland and riparian impacts:

1. The following species shall be added to the list of plants that will be planted on site:

Salix exigua (coyote willow)  
Salix lucida spp Lasiandra (pacific willow)  
Crataegus douglasii (black hawthorne)  
Prunus virginiana (choke cherry)  
Amelanchier alnifolia (service berry)  
Philadelphus lewisii (mock orange)

2. All shrub and tree plantings shall be marked during planting with a label on the plant or accompanying plant stake for ease in determining type of plant and planting location in order to determine compliance with survival rate requirements (see mitigation plan).
3. At the end of three years from planting, there is to be no more than a 6-foot gap of viable plants along the riparian edge of the river. Additional plantings shall be installed if this goal is not met, with an additional monitoring period of three years from the remedial planting date to achieve the coverage goal.

#### **E. Construction Conditions**

Construction methods and sequence will be as follows:

1. Identify, flag and fence the clearing limits and areas to be preserved. Establish work staging areas and access roads.



2. Implement appropriate erosion and sediment control BMPs as per the SWPPP specifications.
3. Clear, excavate, and place jurisdictional fills per the engineered specifications and design.
4. Prepare the benched areas to be planted, and plant as described in submitted documents listed in section D above.
5. Stabilize the slope faces as needed and seed riparian area with native grasses.
6. Maintain and monitor planting success, using contingency plan as needed.

## **F. Timing Requirements**

### **Timing windows**

In-water construction shall occur within work windows as described in the JARPA re-submittal document Biological Evaluation (IMR 20 July 2005) and Biological Evaluation Addendum September 27, 2006 ( or as modified by the US Army Corps of Engineers through consultation with state and federal fish and wildlife agencies).

### **Duration of 401**

This 401 water quality certification is valid for 5 years from the date of issuance by Ecology or per the expiration date of the US Army Corps of Engineers Individual 404 permit, whichever is sooner.

## **G. Emergency/Contingency Measures:**

In the event that the applicant is unable to comply with any of the permit terms and conditions due to any cause, the applicant shall:

- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
- Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (509) 575-2490, and within 24 hours to Ecology's 401 permit reviewer (Catherine Reed) at (509) 575-2616.

- Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

#### **H. Appeal Process:**

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board  
4224 - 6th Avenue SE, Rowe Six, Bldg. 2  
P.O. Box 40903  
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology  
Appeals Coordinator  
P.O. Box 47608  
Olympia, Washington 98504-7608.

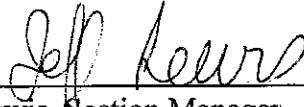
In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator  
Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

*For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>*

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated 2-28-2006 at Yakima, Washington.

A handwritten signature in cursive script, appearing to read "Jeff Lewis", is written over a horizontal line.

Jeff Lewis, Section Manager  
Shorelands and Environmental Assistance Program  
Department of Ecology  
State of Washington